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May 25, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, D.C. 20554

Re: Federal-State Joint Board on Universal Service;
CC Docket No. 96-45

Dear Ms. Salas:

I am writing on behalf of the Competitive Universal Service Coalition ("CUSC") to inform you that representatives of CUSC made an *ex parte* presentation today regarding the proceeding referred to above to Commissioner Gloria Tristani; her legal advisors, Adam Krinsky and Sarah Whitesell; and her legal intern, Linda Yen. CUSC representatives participating in the meeting included Earl Comstock, counsel to Nucentrix Broadband Networks, Inc., Jim Blundell of Western Wireless Corp. (by phone), and Michele Farquhar and the undersigned of Hogan & Hartson, L.L.P., counsel to CUSC. The presentations focused on issues relating to designation of competitive eligible telecommunications carriers; we handed out the attached document as well as copies of written materials that previously have been filed in this docket.

Respectfully submitted,

David Sieradzki

David L. Sieradzki
Counsel for the Competitive Universal Service Coalition

Enclosures

cc: Commissioner Tristani
Adam Krinsky
Sarah Whitesell
Linda Yen

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THE FCC CAN FACILITATE COMPETITIVE ENTRY IN RURAL AREAS BY CLARIFYING THE ETC DESIGNATION PROCESS:

PROCEDURES FOR DESIGNATING ETCs

- State commission and FCC procedures for designating incumbents and new entrants must be identical.
- The FCC should rule that, if states have failed to address ETC applications within a certain amount of time, the applications are deemed granted.

SUBSTANTIVE ETC CRITERIA

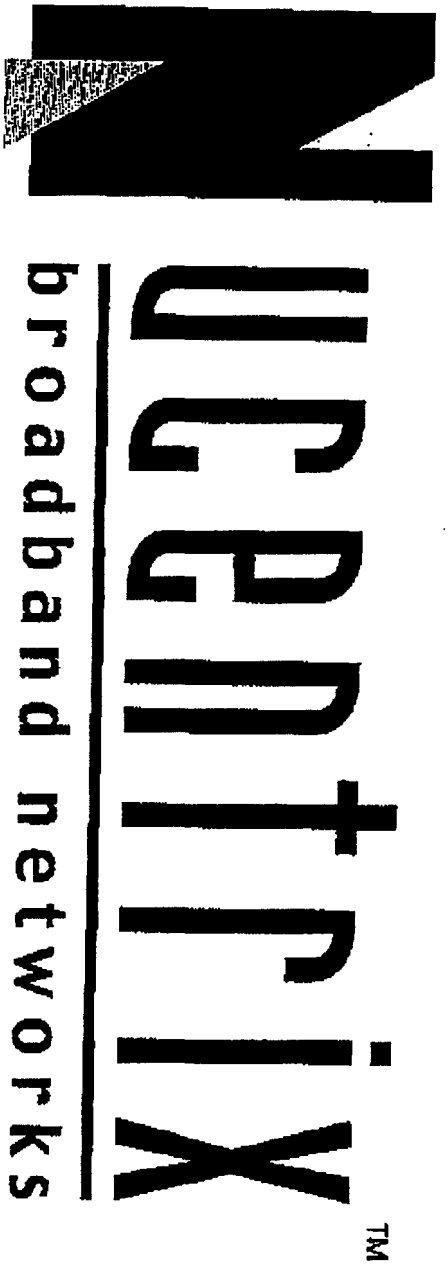
- Applicants need not already be ubiquitously providing universal service to be designated as ETCs.
- ETC applicants need not demonstrate the absence of "gaps" in their service areas to be designated as ETCs.
- The FCC should not allow states to adopt additional ETC criteria for federal support.
- ETC applicants need only satisfy § 214(e) criteria; non-operative terms in § 254 are not ETC criteria
- The analysis should be based on whether the ETC provides the supported services; the specific equipment used to provide service and the rates, terms, and conditions of service are not relevant criteria for consideration.
- Neither minimum local usage, nor criteria relating to data rates, should be prescribed as ETC requirements. All criteria must be competitively neutral.
- Competitive ETCs' designated service areas need not be identical to those of the incumbents.

PUBLIC INTEREST INQUIRY IN RURAL TELCO AREAS

- The public interest inquiry for additional ETCs in rural telephone company service areas should examine the potential benefits and harm to consumers, not "bottom line" harm to rural telcos.
- There is no public interest inquiry for areas <u>not</u> served by rural telephone companies.

214(e)(6) JURISDICTIONAL ISSUES

- The FCC has jurisdiction over non-tribally-owned carriers targeted to reservations.
- The FCC has jurisdiction where state statutes deprive state commissions of authority over a class of carriers.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TM

NUCENTRIX BROADBAND NETWORKS

- Nucentrix uses Multichannel, Multipoint Distribution Service (MMDS) spectrum in the 2.1 – 2.7 gigahertz band to provide wireless high-speed Internet access service and wireless multichannel television service to small businesses and residential consumers in 58 mid-size markets. In addition, Nucentrix is licensed to serve an additional 29 markets, which we are currently in the process of readying for service.

- These markets are not included in the top 30 Basic Trading Areas. Some markets we are serving include Abilene (TX), Beloit (KS), Greenville (PA), Peoria (IL), Paragould (AR), and Stillwater (OK).

- With up to 200 megahertz of spectrum available in each market, Nucentrix can transmit data up to 35 miles from each transmitting station at speeds up to 30 megabits per second for each 6 megahertz channel.

- Nucentrix's IP based transmission network can be used to provide IP telephony in addition to Internet access and other information services.

- In January Nucentrix and Cisco entered into an agreement to test Cisco's VOFDM system for providing broadband services. These tests will be in Texas in April through September (see attached press release).

- For home offices and consumers Nucentrix offers a service comptitive with, and in some cases superior to, DSL in terms of speed and price. Businesses can purchase T-1 or higher services at prices lower than those offered by the incumbent local exchange carrier.

- At present, Nucentrix is focused primarily on small business users because residential subscribers are more costly to serve – particularly in less densely populated areas. This is true primarily due to the costs of backhauling traffic from individual MMDS cell sites to the central switch and from there to the nearest Internet access point.

UNIVERSAL SERVICE SUPPORT IS NEEDED

- Universal service support can help offset the cost difference. Nucentrix believes that a level of support at or below that presently provided to wireline incumbent local exchange carriers would make the difference, and would provide a direct incentive for new companies to serve residential consumers.

- Deployment of those services presently identified for universal service support – single line, voice grade, touch-tone dialing with E911 service – provides the basic conduit for accessing the Internet and advanced services.

- To speed deployment of broadband Internet access in mid-size and rural markets, Nucentrix believes that two actions are needed:

    1) Federal policy should encourage States to designate wireless providers that meet the requirements for an eligible telecommunications carrier as such a carrier (thus making them eligible for Federal universal service support), even in areas served by a rural telephone company; and

    2) Federal policy should be explicit that universal service support will be provided for IP based voice services, and that such services can be provided as part of a package of IP based services.

- In addition, Congress should consider amending section 214(e)(2) to remove the exemption for rural telephone companies. This protection is slowing the deployment of advanced services to rural areas.

- Section 214 (with the above amendment) provides more than adequate assurance that new entrants must undertake the same obligations and risks as a rural telephone company to be eligible for universal service support.

- In October, 1999 the Minnesota Public Commission took the procompetitive step of designating Minnesota Cellular Corporation as an eligible telecommunications carrier in areas served by incumbent rural telephone companies. In that proceeding (P-5695/M-98-1285) the Minnesota Public Commission considered in detail the concerns of rural telephone companies and found that —

    1) it is not credible that rural areas cannot support competitive markets;
    2) the rural telephone companies have presented no evidence that consumers will be harmed
    3) competition may lead to lower prices and better service; and
    4) that the risk of the incumbents going out of business is small.[1]

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[1] *In the Matter of Minnesota Cellular Corporation's Petition for Designation as an Eligible Telecommunications Carrier*, Minnesota Public Commission Docket No. P-5695/M-98-1285 (issued Oct. 27, 1999) at 17-18.

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Overview 1/2

- MMDS Spectrum in 93 markets.

MMDS = multichannel, multipoint distribution service

  - Located in Central and southwest United States.
  - 200 MHz Licensed (Protected) Spectrum @ 2.1 to 2.7 GHz.
  - Multi Gigabit Capacity per Market.
  - 9.1 million households.
  - 269,000 estimated businesses and SOHOs.

Soho = small office, home office

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Overview 2/2

- Facilities based service provider.
- Open markets include:
  - Sherman, Texas.
    - Opened one way (June 1998).
    - Converted to two way (February 1999).
  - Austin, Texas (June 1999).

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Current Offering

- High speed Internet access.
  - Tiered offerings from 256Kbps to 1.5Mbps.
  - Competitive pricing.
    - T-1 speeds at fractional T-1 rates.
    - Competitive with DSL pricing.
  - "Always-on" IP services.
  - Full service ISP - Web hosting, E-mail.
  - Business Reliability - diverse routes to I/N cloud.

DSL = digital subscriber line

IP = Internet protocol

I/N cloud = Internet backbone telecommunications facilities

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Business Objective

To become the leading provider of wireless IP broadband network services in our markets.

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Business Opportunity

INSIGHT RESEARCH :

- 65% of small to medium size businesses have connection to the Internet and only 11% are broadband.
- By 2002 at least 30% of small and medium business Internet access will be at higher speed.
- 1/2 of small businesses with Internet connections will have broadband access within the next 5 years.

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Consumer Opportunity

Forrester research estimates that consumer broadband usage penetrates only 1.3% of total on-line house holds.

By 2002, Forrester expects 30% of the online population will access the Internet via broadband technology.

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The Competitive Advantage

- Today, Nucentrix' primary competitor is the ILEC.
  T-1 services are too pricey for most.
- Cable passes only 40% of businesses - nationwide.
- Density and Distance - Our Advantage.
  - LMDS & DSL have:
    - Distance limitations.
    - ROI challenge in less dense areas.
  - Satellite limited to one way access today.

LMDS = local multipoint distribution service

ROI = return on investment

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Technology

- Ongoing technology / evaluation since mid-1998.
- MCI /Sprint acquisitions validated the spectrum.
- Until 4/2000 no real viable vendor (other than Hybrid).
- Vendor alternatives surfaced with varying issues.
  - ATM versus IP based.
  - Some did not address LOS.
  - Most did not have I/P telephony.
  - Time to market.

ATM = asynchronous transfer mode
LOS = line of sight

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Why Cisco / VOFDM

- First technology to address LOS.
- IP based / cell site technology.
- Has VOIP capability.
- VOFDM

VOIP = Voice over Internet Protocol

VOFDM = Vector orthogonal Frequency division multiplexing

Spread spectrum technology addresses:

- Line of site efficiency.
- Minimizes narrow band interference.
- Uses multipath to advantage.
- Non-proprietary / significant consortium.

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Strategy

- Target Businesses, SOHO, Telecommuters.
- Expand into residential market as CPE prices decline.
- Can achieve '1st to Market' status in most markets.
- Leverage Existing MMDS Headend Infrastructure.
- Provide full, ISP service… not just Access.
- Offer IP Telephony.

CPE = cost per unit of effort

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Timing

- Complete Cisco Field Test.
  - Austin. } Between 9/2000 and 12/2000
  - Amarillo. }
- Receive FCC 2 way licenses - 11/2000.
- Rollout 20 markets by end of 2001.
- Complete market roll-out 2 + markets a month thereafter.
- Add VOIP and other enhanced services.